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Grand jury to hear evidence in rock fight

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Mar. 7--GREENUP -- The fight about an 8-ton hunk of sandstone that was dredged from the Ohio River last fall is headed for criminal court.

Greenup County Commonwealth's Attorney Clifford Duvall confirmed Thursday a grand jury would hear evidence regarding the removal of the boulder, known as Indian Head Rock, from a spot beneath the water by a group of volunteer rescue divers.

The panel will determine whether the divers violated Kentucky law by removing the rock from the river, which is mostly under Kentucky's jurisdiction.

According to Duvall, those responsible for the rock's removal could be charged with violating the Kentucky Antiquities Act, which is designed to protect historical sites and artifacts, Duvall said. The charge is a Class D felony that carries a prison sentence of one to five years.

Removing the rock from the river without first obtaining the proper permits, as the divers allegedly did, could be considered comparable to removing artifacts or remains from an Indian burial ground, Duvall said.

The grand jury will begin hearing the case March 28. Duvall said he anticipated some of the witnesses he had subpoenaed would be "recalcitrant" about testifying.

Portsmouth Mayor Jim Kalb is likely among those who fall into that category. In a Portsmouth Daily Times story carried by the Associated Press, Kalb confirmed he had been summoned to appear before the panel as a material witness.

Kalb also left little doubt about where he stood in the simmering border dispute.

"The rock belongs in Portsmouth. It's a logical place for it," he said. "This is not a case of Kentucky wanting to display it, it's a case of them not wanting Portsmouth or Ohio to have it.

"This is an important part of Portsmouth history, and if the rock is on display, it will be for both sides of the river to enjoy. If it's Kentucky's intent to put the rock back in the river, that should be a crime in itself."

However, a Kentucky historical official said in October he had little doubt the removal of the rock constituted a criminal offense.

"They (the divers) definitely committed a crime and they need to be prosecuted," said David Pollack, site protection program manager with the Kentucky Heritage Council. "The site's protected. It's state property and it's protected under the state Antiquities Act."

Pollack said, based on what he knew of the situation, it sounded as though the divers were "well-intentioned." However, "They disregarded the process and the laws that are in place," he said.

Pollack also said he believed those responsible for removing the rock needed to be prosecuted if, for no other reason, to send a message "that this was something they shouldn't have done."

Indian Head Rock is considered historically significant because, in the years prior to the construction of the lock system on the Ohio River, the rock would be visible when the water dropped below a certain level -- about once every decade. When that happened, people would wade out into the water and carve their names on it.

There are carvings on the rock believed to have been made by Indians. The names of many prominent figures in Portsmouth's early history also are etched upon it.

The rock had reportedly not been seen since the early 1920s. It was under about 16 feet of water, about 40 feet from the shore on the Kentucky side of the river.

The divers who removed the rock used a combination of airbags and barrels to raise it to the surface, then floated it downriver to Portsmouth's Court Street landing, where a crane was used to lift it out of the water.

State Rep. Reginald Meeks, D-Louisville, a member of the state's Native American Heritage Commission, is sponsoring a resolution in the General Assembly condemning the removal of the rock and demanding its return to Kentucky.